



POLICE DEPARTMENT

December 9, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Mohammad Qazi
Tax Registry No. 928995
20 Precinct
Disciplinary Case No. 2009-853

The above-named member of the Department appeared before me on March 11, May 13, and June 28, 2013, and on May 22, 2014,¹ charged with the following:

1. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about and between May 24, 2008 and May 25, 2008, failed and neglected to safeguard property taken from a prisoner, to wit: having removed \$3107.00 from an individual known to the Department taken into custody on May 24, 2008, said Officer took possession of said property, went end of tour, kept said property while off-duty, and didn't voucher said property until his next tour of duty at approximately 0850 hours on May 25, 2008.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT GENERAL REGULATIONS

2. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about and between May 24, 2008 and May 25, 2008, failed and neglected to process an arrest in a timely fashion as instructed by Sergeant Yvette Camarena, to wit, having affected an arrest of an individual known to the Department at approximately 2239 hours on May 24, 2008, said officer did not process said arrest until approximately 0445 hours on May 25, 2008.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY P.G. 208-15, Page 1, Paragraph 3 – ARREST REPORT PREPARATION AT STATIONHOUSE

¹ The time gap between the third and fourth trial dates was due to delay in obtaining a handwriting analysis from the Department's laboratory regarding whose handwriting was on an envelope.

3. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about May 25, 2008, while on duty, was discourteous and disrespectful to Sergeant Yvette Camarena, to wit; said Officer repeatedly mimicked Sergeant Yvette Camarena while receiving instructions from her on processing an arrest.

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT

4. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about May 25, 2008, while on duty, failed to comply with an order issued by Sergeant Yvette Camarena, to charge said individual indicated in Specification # 1, who had been taken into police custody, with Criminal Possession of a Hypodermic Instrument and to thereafter sign the criminal court affidavit.

P.G. 203-03, Page 1, Paragraph 2 COMPLIANCE WITH ORDERS

5. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about September 20, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer took a leave of absence for approximately three hours and five minutes without having the accrueable time.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

6. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about October 14, 2008, was late for a scheduled tour of duty, to wit: said Officer was scheduled to perform a 0800 X 1635 tour of duty and appear at the office of the Civilian Complaint Review Board (CCRB) at 0835 hours, and failed to appear at CCRB until 0900 hours.

P.G. 203-03, Page 1, Paragraph 3 COMPLIANCE WITH ORDERS

7. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about January 25, 2009, while on duty engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer reviewed a Complaint Report for aggravated harassment that he was not assigned to and reached out to the accused listed on the Complaint Report without authorization.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

8. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about January 25, 2009, while on duty, failed to comply with an order issued by Sergeant Thomas Schwing, to perform administrative duties upon the completion of his meal.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

9. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about March 20, 2009, was late for an appearance at Traffic Court, to wit, said Officer received a notification to appear at Manhattan Traffic Violations Bureau (MNTVB) at 1430 hours and did not appear at MNTVB until 1530 hours, resulting in the dismissal of a traffic summons.

P.G. 203-03, Page 1, Paragraph 3 COMPLIANCE WITH ORDERS

10. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about February 4, 2009, while on duty engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer received a notification to appear at Manhattan Traffic Violations Bureau and failed to appear, resulting in the dismissal of a traffic summons.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

11. Said Police Officer Mohammad Qazi, assigned to 20th Precinct, on or about February 6, 2009, while on duty engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer failed to supply the Department timekeeper with his military drill schedule.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq.

Respondent, through his counsel, entered a plea of Guilty to two of these Specifications and entered a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record and mitigation hearing has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 6 and 9. Respondent is found Guilty of Specification Nos. 1, 3, 4, 7, 8 and 10. Respondent is found Not Guilty of Specification No. 2. Specification Nos. 5 and 11 are dismissed.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Paul Cortright, Captain Mark Molinari, and Sergeant Thomas Schwing as witnesses.

Sergeant Paul Cortright

Cortright, a 20-year member of the Department who is presently assigned to the 20 Precinct, recalled that on May 24, 2008 he was on duty serving as the Assistant Integrity Control Officer (ICO) for the 20 Precinct and that he was filling in as the desk officer for the midnight tour. Respondent had made an arrest at 2239 hours on May 24, 2008, and when Cortright asked about the progress of his arrest processing, Respondent told Cortright that he was confirming with detectives. Cortright told Respondent that he should process his arrest quickly because Sergeant Yvette Camarena "was coming in later and that he better get everything done by then" since Camarena was "a stickler for things." Cortright testified that when Camarena arrived at the desk at 4:45 a.m., she told Cortright that Respondent had not yet fingerprinted his prisoner, had not yet completed the online booking sheet and had not yet vouchered the prisoner's car.

Cortright conducted a tape recorded interview of Camarena on October 16, 2009 [Department Exhibit (DX) 1]. At this interview, Camarena told Cortright that when she arrived at the 20 Precinct for the start of her tour of duty on May 25, 2008 she was informed that Respondent was still at the 20 Precinct processing an arrest he had made on May 24, 2008. When she asked him about the progress of his arrest processing, she "discovered that he had not taken any steps in his arrest processing whatsoever."

Camarena told Cortright that because of Respondent's slow arrest processing she had ordered him end of tour because she felt he was getting too much overtime.

Camarena also told Cortright that Respondent's prisoner had asked Camarena "where's my money, \$3,100?" Camarena told Cortright that since Respondent had not said anything to her about recovering money on the prisoner, she asked someone to find Respondent and when Respondent returned, she asked him about the money. He told her that he had it in his pocket because "Raousselles told him to hold the money" and that he had intended to voucher the cash during the day.

Camarena further told Cortright that a hypodermic needle had been found in the prisoner's car but that the original accusatory instrument that Respondent had prepared did not charge defendant with criminal possession of a hypodermic instrument. (DX 2) Camarena told Cortright that when she asked Respondent why he did not charge Respondent with this crime, he claimed that the Assistant District Attorney (ADA) had told him he did not want to charge it. Camarena told Cortright that she then called the ADA who then prepared a new accusatory instrument which included the charge of criminal possession of a hypodermic instrument. Camarena told Cortright that since Respondent did not want to sign the new accusatory instrument containing the added charge, Camarena "had Lieutenant Molinari step in to order him to sign it." Camarena told Cortright that Respondent had "mimicked her throughout the whole process." Respondent subsequently signed the new accusatory instrument (DX 3). Cortright testified that since Respondent did not complete his arrest processing until May 25, 2008, his processing of the arrest was not timely.

Cortright recalled that on September 20, 2008, he investigated a command discipline (CD) that had been issued to Respondent by Lieutenant Crescitti for taking "a day off without having enough time on the books." Respondent had called in to the command and requested that a UF-28 be prepared for him to take 8 hours and 35 minutes of vacation time that day. A UF-28 was prepared and approved. Cortright testified that according to Department leave procedures an officer is responsible for knowing how much vacation time he has accrued. On September 20, 2008, Respondent had a vacation leave balance of only 5 hours and 30 minutes.

Cortright testified that on February 4, 2009, Respondent was issued a CD for failing to attend Manhattan Traffic Violations Bureau (MTVB) on two occasions. The parties stipulated that on January 20, 2009, Respondent received a notification, which he signed, to appear at MTVB on February 4, 2009, but that he did not appear at MTVB that day. During his official Department interview on June 1, 2009, Respondent stated that the reason that he had not appeared at MTVB on February 4, 2009 was because he was on military leave that day. The parties stipulated that Respondent was on military leave from February 4, 2009, to February 8, 2009, and that on January 28, 2009, Respondent submitted a UF-28 for February 4, 2009, the date that he was supposed to appear at MTVB (DX 4). Cortright testified that Department leave procedures require an officer who is going on military leave to provide the timekeeper with a military leave schedule for the entire year. Cortright testified that Respondent was supposed to provide him with a military drill schedule on February 6, 2009, but Respondent failed to do so and when Cortright asked Respondent to provide the timekeeper with a copy of his military schedule, Respondent stated that he was "working on it." Thus, Respondent did not

provide the schedule in a timely fashion. Cortright testified that since there was a conflict between appearing at MTVB and being on military leave, when Respondent "originally got the notification to appear in court he should have brought that to roll call and notified them that he had military leave."

On cross-examination, Cortright testified that although he had worked with Respondent for ten years and knew that Respondent spoke English with an accent, he was not aware that English was Respondent's second language.

Cortright confirmed that on May 25, 2008, he took over as desk officer at about 2:00 a.m. and that he was responsible for Respondent and the arrest processing. He recalled that "there was a little confusion with the arrest" in that Respondent was attempting to determine the true identity of the person he had arrested. Cortright acknowledged that accurately identifying the individual who has been arrested is an important facet of processing the arrest. He agreed that establishing the correct identity of the arrestee increases the length of time it takes to process the arrest and that Respondent had consulted with the detective squad. Cortright confirmed that processing the arrest involved a weapons search, an inventory search of the vehicle, preparing the online booking sheet, performing a live scan or identifying the individual through fingerprints, and preparing movement slips which can be done only after the identity of the arrestee is established. Cortright agreed that each one of these issues could have added to the time it took Respondent to process the arrest.

Cortright agreed that he told Respondent to expedite the arrest processing because Camarena would be relieving him soon. He did not recall telling Respondent "to watch his back because Camarena was gunning for him." He agreed that it was clear to him that

if the arrest had been processed, Camarena would have had “less reason to have an issue” with Respondent. Cortright did not know that Respondent had previously complained to the Internal Affairs Bureau (IAB) that Camarena had abused her authority.

Cortright confirmed that before he assumed control of the desk, a command log entry had already been made that Respondent had recovered in excess of \$3,000 in cash from his prisoner, and that although that a new desk officer is supposed to look at the command log when assuming control of the desk to find out what was going on in the precinct, he did not notice this entry and that Camarena should have noticed it even though she told him that “she didn’t know anything about the \$3,100.” Cortright was not aware that Camarena had written on an envelope the additional steps she wanted Respondent to take when he returned to duty. Within 20 minutes after he had turned the desk over to Camarena, Cortright went end of tour and so he was not a witness to the subsequent interaction between Respondent and Camarena.

Cortright confirmed that in 2008, the only way Respondent could ascertain his vacation leave balance from home would be to look at his most recent paystub. Cortright agreed that the supervisor who had prepared and approved Respondent’s UF-28 was supposed to determine whether Respondent was entitled to the time he was requesting.

Cortright conceded that Respondent was only obligated to provide his military drill schedule to the timekeeper, not to him, and that DX 4 showed that although Respondent submitted his request for military leave on January 28, 2009, the timekeeper did not diary his request until February 3, 2009, and that since ten calendar days notice is needed in order to change a court date, roll call could not have changed the court date after January 28. Cortright confirmed that since he did not interview the timekeeper or

any members assigned to roll call, he did not know whether Respondent had brought the conflict between his military leave and his scheduled appearance at MTVB to their attention. Cortright confirmed that Lieutenant Duggan, the ICO, and Camarena are friends.

Captain Mark Molinari

Molinari, an 18-year member who is presently assigned to the Special Victims Division, recalled that during 2008 he was assigned to the 20 Precinct as the day tour platoon commander. On May 25, 2008, as he was signing in at about 10:25 a.m., he heard a “heated debate” between Respondent and Camarena at the desk regarding signing an affidavit. Molinari heard Camarena order Respondent to sign an affidavit and he heard Respondent refuse to do so. Molinari testified that Camarena and Respondent went back and forth “three or four times.” Molinari asserted that Respondent was discourteous to Camarena in that he spoke to her in a “very argumentative tone, he was demeaning her,” and “he was almost mimicking” her by “repeating her words back to her but in a voice not his own, almost like impersonating a different voice or impersonating her voice.” Molinari testified that he asked Camarena, “Are you going to give this guy a CD already?” and that he directed Respondent to “sign the affidavit” which Respondent then did.

Molinari testified that Camarena had told him that Respondent had made an arrest about “12 hours” earlier and that Respondent had not performed any administrative work with respect to the arrest, such as preparing an online booking sheet or vouchers.

Camarena told Molinari that inside the prisoner's vehicle she had found hypodermic needles and that she had told Respondent to voucher the needles and to add a possession charge to the accusatory instrument. Molinari testified that Camarena told him that Respondent told her that he had spoken with the ADA who had said that she did not want to add the possession charge. Camarena told Molinari that she had subsequently called the ADA who told her that she had not been informed about the hypodermic needles and who added a charge of possession of hypodermic instrument to an amended criminal complaint which she sent to the precinct to be signed by Respondent.

On cross-examination, Molinari confirmed that he had been found guilty of reclassifying and misclassifying crimes without proper investigation and he had pleaded guilty to failing to maintain his activity logs and impeding an investigation. Molinari acknowledged that he was not present when Respondent made the arrest, prepared the online booking sheet, fingerprinted the prisoner, or vouchered the cash, the car or the hypodermic needles.

Molinari had no recollection of Respondent telling him that the owner of the vehicle had said that the hypodermic needles belonged to his uncle who was diabetic and that the owner, therefore, had a legal reason to have the needles in the car; or of Respondent telling him that he believed he had a good reason not to include the possession charge on the criminal complaint; or of Respondent telling him that he did not want to sign the affidavit because he did not want to be placed in a position where he could potentially perjure himself. Molinari agreed that when he saw Respondent being discourteous to Camarena he could have admonished him or issued him a CD but he did not do so and instead ordered Camarena to do it.

Sergeant Thomas Schwing

Schwing, a 19-year member of the Department who is presently assigned to the 20 Precinct, recalled that on January 25, 2009, he issued Respondent a CD which was subsequently converted into a formal charge.

Schwing testified that on that day, they had been assigned to a funeral detail and after finishing the detail, they returned to the command. Duggan told Schwing to have the detail go to meal and after meal, "they should be assigned to administrative duties and they would go end of tour from there." While being sent on meal, Respondent asked Schwing if he could take enforcement action, "go out in an RMP and maybe write summonses or some other enforcement." Schwing told Respondent that he would speak with Duggan, whom he called in front of Respondent, and Duggan said no. Schwing told Respondent that Duggan had denied his request, and that Duggan wanted Respondent to take his meal, go administrative, not take any enforcement action and go end of tour.

Upon returning from meal, Schwing saw Respondent in the arrest processing room at the computer typing. Schwing asked the desk officer, Sergeant Roscher, what Respondent was doing. Roscher said that Respondent had an arrest. Schwing asked Roscher if he verified the arrest and Roscher assumed that the patrol supervisor, Camarena, had. Schwing called Camarena, who denied that she had verified any arrests. Schwing then spoke with Duggan, who said that he had not verified any arrests. There were no other supervisors working that day.

Schwing testified that verifying an arrest means making certain that there was probable cause to make an arrest. "The supervisor always has to be on scene or has to be informed that there is an arrest taking place." Schwing testified that an officer cannot

unilaterally verify an arrest on his own and that an officer cannot take a complaint and reach out to the defendant on his own, as it is not part of a patrol officer's responsibility. That would be the responsibility of the detective squad.

Schwing then spoke with Respondent and asked him who had verified the arrest. Respondent said that Roscher had verified the arrest. Respondent also told Schwing that the arrest was from "an open 61 for aggravated harassment," and that "he went into the 124 room, took a 61 out of the tray of complaints, ... called the perp, invited this wanted perp into the stationhouse and collared the perp in the lobby." Schwing said that this was not the proper procedure, which would have been to have "the 61 signed by a supervisor into the 124 room and it would have been input into the Omni System and it would have been assigned to the Detectives Squad for further enforcement."

Schwing testified that when an officer has an arrest on patrol, a supervisor verifies the arrest at the scene. After bringing the perpetrator into the stationhouse, the officer enters the information online and completes the complaint report because it is his arrest. However, that is not what happened with Respondent on this occasion.

Schwing testified that to the best of his knowledge, no supervisors authorized Respondent to reach out to "the wanted perp" and make an arrest. Schwing also testified that he did not see Respondent conduct the administrative duties that he was ordered to do that day.

On cross-examination, Schwing admitted that he was found guilty, as an employee of the Department, by Office of Equal Employment Opportunity (OEEO) of making disparaging remarks to another member of the service which a third member of

the service took offense to. He denied that Respondent had filed OEEO complaints against him.

Schwing testified that he had made about 90 arrests during his 19 years as a member of the Department. Schwing acknowledged that he drafted a command discipline against Respondent on which he wrote that Respondent effected an arrest at 4:02 p.m., that Respondent conducted an unauthorized and improper investigation by calling the perpetrator and asking him to turn himself in, that Respondent failed to follow the specific directions of the supervisor by not conducting administrative duties.

Schwing acknowledged that processing an arrest is considered administrative duties. Schwing said that a supervisor has to verify probable cause exists to authorize an officer to effectuate an arrest. In this case, there was an open complaint for aggravated harassment, which is an official Department document and carries the weight of the allegations contained therein. The open complaint had not been assigned to the detective squad.

Schwing testified that according to the command log entries for that day, Roscher was the desk officer at 3:05 p.m., Schwing went end of tour at 3:52 p.m., and Duggan went end of tour at 4:00 p.m. The command log entries further showed that Respondent's arrest was entered in the command log at 4:02 p.m. but that it was effectuated at 3:33 p.m. Schwing acknowledged that Roscher was the desk officer before whom Respondent brought the arrested prisoner and that the entry was made by the desk officer, Roscher. As a result, Respondent processed the prisoner, who was issued a summons. Schwing was unaware whether Respondent received any overtime for the

work. Schwing acknowledged that in the command discipline, he used 4:02 p.m. as the arrest time.

Schwing did not know which section of the Patrol Guide required an officer to obtain authorization before he reached out to an accused on an unassigned complaint report. Duggan did not instruct Schwing to issue a command discipline against Respondent.

Schwing acknowledged that in order to effectuate an arrest at the stationhouse, the officer has to walk the prisoner "a couple of feet" to the desk sergeant, inform the desk sergeant of the circumstances of the arrest, and the desk sergeant can authorize the arrest. Schwing admitted that Roscher logged in Respondent's arrest in the command log.

On re-direct examination, Schwing testified that he spoke with Roscher, who told him that he did not verify or authorize the arrest.

On re-cross examination, Schwing acknowledged that the arrest occurred in January, 2009, that although he had to look at the date to refresh his recollection, he could nevertheless recall the conversation with Roscher "these many years later." He acknowledged that Roscher logged the arrest in the command log.

Respondent's Case

Respondent called Police Officers Richard Lopez and Aneudy Rosa as witnesses and testified on his own behalf.

Police Officer Richard Lopez

Lopez, a retired member, served with the Department for 27 years. His last assignment before retiring was as a patrol officer at the 20 Precinct where he worked with Respondent. During the course of his career, he made over 800 arrests.

Lopez testified that where an accused individual surrenders himself at the stationhouse, the arresting officer can bring the accused before the desk sergeant to authorize the arrest. Lopez testified that a command log entry made by the desk sergeant is significant in that it demonstrates that the desk sergeant verified the arrest because he took the pedigree information from the arresting officer. The desk sergeant has to obtain the pedigree information and the location of arrest. In addition, the arresting officer makes the desk sergeant aware that he shall be walking an individual that he will be placing under arrest into the stationhouse. Lopez testified that if the desk sergeant disagreed with the police officer who brought this person before him, then the desk officer would not make any command log entries regarding the arrest because he is not verifying the arrest.

Lopez testified that while he was assigned to the 20 Precinct, the majority of his arrests were made through open complaint reports. Lopez recalled that he "would go through the basket, see any 61's which are open complaint reports, if I could see where I'm able to effect an arrest, I will pass it by the supervisor and usually the supervisor is going to agree because they'd rather have patrol get the arrest as a number instead of the squad..." Lopez opined that it was his belief that effectuating an arrest inside the command by calling the perpetrator and asking that he turn himself in at the stationhouse constitutes an administrative duty. Lopez testified that so long as the supervisor knew of

what you were doing in going through the open complaints, and that you were following proper procedure such Miranda warnings, then the supervisor was “going to give you the okay.” Lopez said that pro-active officers engaged in such conduct. Lopez said that a command log entry authorizing the arrest indicated to him that approval by the supervisor was granted.

Lopez testified that based on his experience working with Respondent, Respondent was “qualified, he’s very proactive, he’s knows what he’s doing, he’s on his feet when it comes to effecting an arrest.” Lopez testified that Respondent followed proper procedure in effectuating the arrest for which he received a command discipline.

On cross-examination, Lopez said that he was assigned to the 20 Precinct for about ten years. He worked as Respondent’s partner and because he had more experience, he supervised Respondent as an officer. However, he was not officially Respondent’s supervisor and never evaluated him. Lopez said that the information he had regarding Respondent’s arrest on January 25, 2009, came only from Respondent.

On re-direct examination, Lopez said that he provided supervision to Respondent as a senior officer to a junior officer. Lopez also testified that Respondent stuttered.

Police Officer Aneudy Rosa

Rosa, an 11-year member of the Department, is presently assigned at the 20 Precinct, where she has known Respondent for nine years.

Rosa testified that Respondent stutters and has stuttered during the nine years that she has known him. She also said that he speaks English with an accent.

Rosa said that if a supervisor gives an officer a notification, the officer does not have the option of not signing. Even if the notification is on a vacation day, the officer cannot say that he is not signing.

Rosa testified that on May 25, 2008, she was working as a patrol officer and had an arrest at about 10:57 p.m. Respondent had an arrest before Rosa at about 10:45 p.m. Processing an arrest involves preparing the online booking sheet, fingerprinting, checking for warrants and doing an investigation. Rosa said that she had effectuated her arrest outside the stationhouse and brought the prisoner to the desk officer, who was Camarena. She did not recall Respondent in the process of dealing with his arrested individual at the desk. She did not recall observing Respondent and Camarena engaged in an argument. She testified that an argument would have been out of the ordinary and she would have remembered it.

Rosa did not see Molinari in the vicinity of the desk that evening. She did not recall seeing Respondent act discourteous towards Camarena in any way that evening. She said that "he's not that kind of officer where he's going to be fighting with anybody; so if he were, it would have been, like, a shock to me, so I would have recalled something like that." She emphasized that it would "absolutely" have been out of the ordinary. Rosa described Camarena as "just a very discourteous person" not just towards Respondent but also towards "a lot of officers in general."

Rosa testified that there came a time when, without finishing the processing of the arrest, her tour of duty ended. She said that her tour continued the next morning at 8:00 a.m., which was the same time that Respondent signed in. She said that Camarena did not instruct her to end her tour without finishing the arrest processing.

On cross-examination, Rosa said that she knew of the charges brought against Respondent but did not know that one of the charges was that Respondent took monetary property off-duty. She said that when you make an arrest, you generally voucher the property. She has never taken monetary property with her off-duty.

Rosa said that Camarena had issued her a command discipline for “[n]ewspaper in the RMP, in the police vehicle and failure to give a disposition back on a timely basis.” She said that Camarena never issued her a command discipline for being discourteous. She also said that the time to process an arrest varies but that it has never taken her 24 hours to do so.

On re-direct examination, Rosa testified that if a superior officer orders an arresting officer to cease the processing of the arrest before the vouchering and all the other processing is complete, then the arresting officer must stop and has no other option.

Respondent

Respondent, a 12-year member who is presently assigned to the 20 Precinct, testified that because he was born in [REDACTED] and English was not the language that was spoken in his childhood home, he learned to speak English as a second language.

Regarding Specification Nos. 6 and 9, which Respondent pleaded guilty to, he offered testimony in mitigation of the penalty to be imposed. With regard to Specification No. 6, he admitted that although the roll call for October 14, 2008 indicated that he was scheduled to appear at the offices of CCRB at 0830 hours, he did not appear there until 0900 hours because 0900 hours had been the start time for all of his court appearances and he was under the impression that he did not have to appear at CCRB

until 0900 hours. With regard to Specification No. 9, he admitted that he was one hour late in appearing at MTVB on March 20, 2009, in that he was notified to appear at 2:30 p.m. but he did not appear until 3:30 p.m. which resulted in a summons he had issued being dismissed. Respondent explained that he was late because he had to stop at the stationhouse to pick up his Activity Log and the summons and because he became "stuck in traffic" while driving from the stationhouse to MTVB.

Regarding Specification Nos. 1 through 4, Respondent asserted that Camarena's actions toward him on May 25, 2008, were the direct result of the fact that he had filed a complaint against her with IAB regarding a September 22, 2007 incident which occurred inside the stationhouse. He recalled that he had arrested three individuals and processed the "collars the whole night." The next morning, he was scheduled to speak with the ADA about the arrests and he showed up "26 minutes late; it was my RDO." Camarena was the desk officer and she became very upset with Respondent because he was late. He testified that he had slept that evening in the dorm, which he described as a place inside the precinct where the officers sleep if they have an arrest or must go to court the next day. That evening, he slept for three hours and he was fasting because it was Ramadan. When he showed up late, Camarena demanded that he submit a UF-28 for the RDO. Respondent asserted that Camarena also ordered him "to stand at attention on a two-by-two square tile box and not to move from that location with the full uniform on with the gun belt, even though I was still processing the arrest, with my hat...on...with my over-gear and stand at attention and not to move from that location for approximately an hour and a half....I was tired, I had mental and physical fatigue, I slept for three hours, I was tired, the building was hot, I was fasting; I passed out, and I got hurt, I fell

backwards, my head hit the table that was there and I became unconscious, I was removed to the hospital." At the hospital, Respondent was treated for injuries to his "back and [his] head, the back of [his] head." He testified that he filed a line-of duty report with respect to the incident and he indicated on the report how he was injured that "the reason I was hurt is because of Sergeant Camarena's improper and unlawful order that she gave me" LAB referred Respondent's complaint about the incident back to his command.

Respondent testified that before this incident, his evaluations were "4.5" in that he was told that he was an asset to the Department, that he had excellent arrest processing experience, and that he should assist junior officers with the processing of arrests. His evaluations said that Respondent is always respectful of his supervisors, that Respondent's "arrest processing and computer skills are excellent" and that he "is eager to help new officers and those who are less proficient in these areas," and for which he received a 4.5.

Respondent testified that on the evening of May 24, 2008, he arrested a man who twice asserted that his name was [REDACTED] (even though his real name was [REDACTED] Person A) and who twice provided a false date of birth (DX 3). Respondent said that when he stopped the car, he asked Person A for his license, registration and insurance. Person A said that he had lost his wallet. Checking the system, Respondent got nothing. Respondent returned to Person A's vehicle a second time, asked Person A for his name and told him that if he gave a false name, he would be charged with false personation. Person A gave a name and date of birth, and again Respondent, in doing a search, got nothing.

Respondent returned to the vehicle a third time and told Person A that he was being placed under arrest because he had no license, no registration, no insurance and the license plates were destroyed. Person A responded, "I'm sorry, I was lying, my license is suspended." At this point, Person A gave Respondent his real name and date of birth, which Respondent ran through the system and it showed that Person A had a suspended driver's license.

A female passenger sitting in the vehicle with Person A was the owner of the vehicle. Respondent found a "brand new packet" of clean hypodermic needles inside the car. The needles were "not used, had absolutely no residue of any drugs whatsoever." He asked the owner of the vehicle about the needles, and she said that her uncle used her car frequently, that he had diabetes, and that he used the needles for insulin shots.

Respondent testified that the processing of an arrest requires many steps. He must find out the true identity of the prisoner. In this case, Person A had no identification on him. Respondent said he took various investigative steps to learn the true identity of Person A, including performing warrant checks, a Triple I check to determine if he was wanted, and that he spoke with the detective squad as well. He searched the vehicle for weapons and drugs. Respondent said that all these various steps took time.

Respondent testified that Cortright was the desk officer but was to be replaced by Camarena at 5:00 a.m. Cortright told Respondent "she's gunning for you, she's coming after you, you better watch your back."

When Camarena replaced Cortright as the desk officer, she asked Respondent about the arrest and what steps he had taken. When he explained, she showed no concern about the arrest processing. Respondent told Camarena that he needed to complete the

vouchers, including the vouchering of the money and the keys, and that the arrest processing was not complete. Camarena told Respondent, "I don't care. You're finished, you're done, you're end of tour." Camarena placed a command log entry of Respondent signing out at 0615 hours and when Respondent told her that he had the money, she said, "You're done. Come back at 0800 hours and process the arrest." Respondent testified that he signed out and stayed at the precinct.

Respondent testified that he had the prisoner's cash when Camarena ordered him to go end of tour. The only way he could safeguard the money was to keep it on his person. He did not go home; he stayed inside the stationhouse and he kept the \$3,107 in cash on his person.

At 8:00 a.m., Respondent resumed the arrest processing, at which time Camarena handed Respondent an orange envelope (RX A), which in Camarena's handwriting² had Person A, (the name of defendant), the arrest number, Respondent's name, and the words "keys, cash, vehicle, to be vouchered," and told him, "This is what you need to do."

Respondent explained that the arrest processing took as long as it did because it was an ongoing investigation to find out the identity of the person and because "it took time to find out what exactly I'm going to charge the individual, if there's any weapons or guns or drugs in the car, knowing that - - the fact that the defendant does have a history of having a gun possession, of selling drugs, and having that knowledge from the Detectives Squad; and also to find out if the vehicle itself was stolen or not." "I had to do a series of investigations to find out the true charges I was going to charge the defendant

² A handwriting analysis by the Department's laboratory concluded that the handwriting on the envelope was Camarena's handwriting (RX A).

with” Respondent testified that there came a time when he conferred with the ADA and drafted a criminal complaint, in which defendant was charged with false personation and suspended/unlicensed operation. He did not charge criminal possession of a hypodermic instrument because of the facts before him.

Respondent said that when Camarena learned of the hypodermic needles, she wanted him to call the ADA and add the possession charge. Respondent explained to Camarena the circumstances and said that according to his investigation, it was not a crime to have hypodermic needles in the car for medical issues. Respondent testified that he feared that if he added the possession charge to the complaint, he “would be committing a perjury.” Respondent testified that another supervisor, Molinari, became involved and Respondent explained his fear of perjuring himself but Molinari said that “it’s a hypodermic needle and that’s it, it’s a charge.” A second criminal complaint was drafted with the possession charge, Respondent signed it and it was submitted to the DA’s Office. Respondent denied ever mimicking, making fun of or making derogatory comments towards Camarena.

Respondent recalled that on September 20, 2008, he called the desk officer because he had an emergency and asked to take the day off. According to his most recent paystub (RX B),³ dated September 19, 2008, he had 10 hours and 50 minutes as leave balance and he needed 8 hours and 35 minutes for the day. In 2008, the NYCAPS system was not in existence, so Respondent was not able to check his leave balance online. Respondent testified that a supervisor at the desk approved the day off and completed a UF-28 on his behalf, authorizing Respondent to have the day off for 8 hours and 35 minutes. Respondent said that he first learned of the accusation that a portion of that

³ The Advocate stipulated that the paystub was “an actual [D]epartment paystub.”

time, about 3 hours and 5 minutes, was not authorized at his official Department interview on June 1, 2009.

Respondent explained that the 20 Precinct has "a policy of keeping a sheet of paper typed with the name of the officers that are in a negative, that have negative time on the books, and it's kept on the 20th Precinct desk." The reason for the sheet is for the desk officer to look at it and determine if the member calling in and requesting an emergency day has enough time on the books. The desk officer uses the sheet to approve or disapprove the time off. Respondent said that "if there's any doubt, they have the ability to call up directly to payroll and find out if the person who is requesting the time off has a negative balance or how much time they have." Payroll and the timekeeper maintain the record.

Respondent testified that on January 25, 2009, he returned to the command from a detail. The supervisors for the detail were Duggan and Schwing. As soon as he returned from the detail, he asked Schwing if it was okay for him to go out and write summonses because he wanted "activity" and was worried that he would be penalized for insufficient summons activity. Schwing spoke with Duggan, who said no. Schwing instructed Respondent to go to meal and then perform administrative duties.

Respondent said that for his administrative duties, he looked up an open complaint report for aggravated harassment. The case had not been assigned to anyone. He called the complainant to understand the nature of the complaint. She explained to him the details of the complaint and gave him the name of the perpetrator. Respondent called the perpetrator and spoke with her. He found out that the perpetrator was in "very

close proximity" to the precinct, and he asked her to come into the stationhouse. The perpetrator said yes, that she will come to the command.

At that point, Respondent went over to Roscher, the desk officer, and explained the circumstances to him. He told Roscher that he spoke with the complainant and the accused and that it was his intention to arrest the accused. "And he said absolutely, he verified it, he says go." The accused surrendered at the stationhouse and Roscher authorized the arrest. Respondent brought the accused to the front of the desk, Roscher gave him a blank EPI card, which Respondent filled out. It had the name, charge and all the other information, and at that point, Roscher stamped the arrest into the command log, indicating that there was an arrest at the 20 Precinct.

The command log (RX C) indicated that Roscher became the desk officer at 3:05 p.m. and that Roscher was the desk officer at the time of the arrest. To effectuate the arrest, Respondent never left the precinct. He also never received any overtime. He did all the work during his shift at the precinct.

Respondent explained that he has served in the U.S. Army for 14 years as a specialist, including administrative military police training. Respondent's Leave of Absence Report, submitted on January 28, 2009 (RX D), covered five days from 1500 hours February 4, 2009, through 2335 hours February 8, 2009. The leave of absence was for military leave. The leave of absence was signed by Respondent's supervisor and at the bottom of RX D, there is an indication that a timekeeper with the initials DW and whose last name is Williams logged in the report on February 3. RX D is the document that Respondent submitted to notify the Department of his military duty.

Respondent testified that as a member of the military, he is given military orders which are the equivalent of notifications telling a member that he is required to appear for military duty. The military orders may be for limited periods of time, and his military order in question was to appear for the week indicated on his leave of absence report. He also received military drill schedules that detail his schedule. The military is responsible for the military drill schedule. The military determines when the schedule becomes available. “[T]here’s no set time to get that particular piece of document, that schedule. It all varies when the military wants to issue that particular calendar, so to speak, for the year. It just all depends.”

Respondent explained that he had no power to get the U.S. Army to issue the drill schedule at any given time. He testified that on February 6, 2009, he had not received his military drill schedule for the 2009 calendar. On February 6, 2009, he was on military leave duty but he did not have any document from the military that he could submit to the Department at that time. Respondent could not recall where he was specifically assigned on February 6, 2009.

Respondent testified that when he received the notification to appear in traffic court, he signed the notification because “[i]t’s always been the policy in roll call, they give you a notification and it’s always been the policy, sign it now and fight it later, meaning that if there is any conflicts, you still need to sign it and then get those conflicts resolved after you sign it.” Respondent described it as “basically a direct order” to sign the notification and address the conflict later, which he did. Respondent testified that Duggan, the ICO, and Camarena had “a very intimate relationship.”

On cross-examination, Respondent testified that he arrested Person A on May 24, 2008, at about 10:39 p.m. He arrived at the precinct with Person A at about 10:45 p.m. when he began conducting an investigation which included determining the true identity of his prisoner. Respondent spoke with the female passenger at the precinct, which took about an hour. He took investigative steps regarding the vehicle, to make certain that it was not stolen, had insurance and registration, and confirmed the owner.

He also spoke with Detective Rodriguez at the squad regarding any photos available to identify the face with the name of the prisoner. Respondent was advised by the squad that Person A had been arrested "for drugs and also for gun possession." Respondent then conducted a plain view search of the vehicle before the end of tour. He did not see any weapons. He saw "just general miscellaneous stuff inside the vehicle."

He recovered \$3,107 in cash from Person A when he first brought him into the stationhouse at about 10:45 p.m. The money was inside Person A's pocket. Respondent placed the money in front of the desk and the desk officer verified that Person A had this money. At that point, Respondent kept the money on his person. Cortright told Respondent that Camarena was coming in and to watch his back because she was "gunning" for him.

Respondent said that he asked Person A about the hypodermic needles and Person A told him that they belonged to his uncle who frequently used the car and had diabetes. The female passenger, Person A's sister, confirmed this as well. He did not speak with the uncle.

When Camarena ordered Respondent to go end of tour at 6:15 a.m., he stayed in the locker room inside the precinct. The money was on his person. He returned to duty at 8:00 a.m. when Camarena handed him RX A and he finished the arrest processing.

When Camarena told him to add the charge of possession, he told her that he was concerned about perjuring himself and did not want to lie about a charge that did not exist. Molinari then walked in and Respondent expressed his concerns to him as well.

Respondent spoke with the ADA twice about the Person A arrest. The first time, he told the ADA the circumstances of the arrest. He did not mention the hypodermic needles. The second time he spoke with the ADA, after he was ordered to do so by Camarena, the conversation concerned adding the criminal possession of a hypodermic instrument charge to the criminal complaint.

Respondent acknowledged that he was not assigned to the complaint report of aggravated harassment on January 25, 2009. No one told him to reach out to the complainant in that case. He did so because he is "a proactive cop" and he "wanted to get activity."

Respondent testified that on January 20, 2009, the date he received the notification to appear in MTVB, he spoke to the personnel officer in the 20 Precinct roll call office. Respondent testified that he told the personnel officer that there was a conflict between the notification he had received to appear at MTVB and the fact that he was scheduled to be on military leave on the date contained in the notification that he had to appear in MTVB. He did not recall the name of the individual he spoke with regarding the conflict.

Respondent testified that he mentioned RX A during his official Department interview but he did not bring it with him to the interview.

FINDINGS AND ANALYSISSpecification Nos. 6 and 9

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 6 and 9. The testimony Respondent offered in mitigation of the penalty to be imposed for the misconduct he pleaded guilty to under these two Specifications will be discussed in the Penalty section of this decision.

Specification Nos. 1 through 4

These four charges all involve Respondent's processing of an arrest he made on May 24, 2008.

Specification No. 1

Respondent is charged with having failed to properly safeguard \$3,107.00 in cash that he removed from the arrestee on May 24, 2008 in that when he went end of tour he kept possession of this cash while he was off-duty and did not voucher this cash until his next tour of duty on May 25, 2008. Although this charge cites to Patrol Guide Procedure No. 203-10, the Patrol Guide Procedures which delineate an arresting officer's duties with regard to non-evidence currency that has been removed from an arrestee are Patrol Guide Procedure No. 218-01 "Invoicing Property – General Procedure," and Patrol Guide Procedure No. 218-36 "Processing Non-evidence Currency." Both of these Patrol Guide Procedures require an arresting officer to prepare a Property Clerk Invoice Worksheet and to deliver this worksheet and the currency to the desk officer for vouchering and safekeeping.

I find Respondent guilty based on his own testimony in which he admitted that he put the \$3,107.00 in cash that he removed from the arrestee into his pocket and that he kept this money on his person until his next tour of duty commenced on May 25, 2008. Respondent asserted that he had no choice other than to do this because Camarena had ordered him to immediately go end of tour and if he had tried to voucher the currency with the desk officer at that point he would have been disobeying Camarena's order. I reject Respondent's asserted justification. Respondent confirmed that Camarena made a command log entry at 0615 hours that Respondent was signing out end of tour. Thus, the record establishes that for over seven hours from the time he arrived at the stationhouse with his prisoner until he went end of tour, Respondent failed to prepare and deliver a Property Clerk Invoice Worksheet and the \$3,107.00 in currency to the desk officer for vouchering.

Respondent is found guilty of Specification No. 1.

Specification No. 2

Respondent is charged with having "failed and neglected to process an arrest in a timely fashion as instructed by Sergeant Yvette Camarena" in that "having affected an arrest... at approximately 2239 hours on May 24, 2008" he did not process this arrest until "approximately 0445 hours on May 25, 2008."

This charge, as worded, contains two major flaws. First, Cortright testified that Camarena did not arrive at the 20 Precinct until shortly before 0445 hours on May 25, 2008, at which point she approached the desk and told Cortright that because Respondent had not taken any steps in his arrest processing she had concluded that Respondent's

arrest processing was slow and she had ordered him end of tour because she felt he was getting too much overtime. Thus, Cortright's testimony establishes that Camarena did not instruct Respondent regarding the processing of his arrest until just prior to 0445 hours on May 25, 2008.

The second major flaw regarding the wording of this charge concerns the statement that Respondent did not process this arrest until "approximately 0445 hours on May 25, 2008." As the Assistant Department Advocate (the Advocate) was cross-examining Respondent on the final day of this trial, the Advocate sought to amend this charge by changing "approximately 0445 hours on May 25, 2008" to "4:45 p.m. on May 25, 2008." (Transcript p. 302-305) Since this charge accuses Respondent of having failed to process his arrest "in a timely fashion," basic due process required that the Advocate provide Respondent with adequate advance notice of the specific period of time that the Advocate was contending constituted an untimely period of time.⁴ Since this charge was served on Respondent in November, 2009, the Advocate had ample time to amend this charge before trial. Since the Advocate did not seek to amend this charge until this trial was nearly finished, throughout the trial Respondent had relied on, and had the right to rely on, the specific language contained in the charge that he failed to process his arrest "in a timely fashion" because he "did not process said arrest until approximately 0445 hours on May 25, 2008."

I will next discuss the proof offered by the Advocate at this trial to establish that the period from 2239 hours on May 24, 2008 until approximately 0445 hours on May 25, 2008, constituted an untimely period in which to process the arrest. Although Cortright

⁴ See Wolfe v. Kelly, 79 AD3d 406, 911 NYS2d 362, App. Div. LEXIS 8957 (1st Dept 2010) and the cases cited therein.

testified that since Respondent did not complete his arrest processing until May 25, 2008, his processing of the arrest was not timely, Cortright testified that the allegation that Respondent had failed to process his arrest in a timely fashion was not made by him. Rather, it was made by Camarena. Since Camarena did not testify at this trial, her statements to Cortright (DX 1) constitute uncorroborated hearsay evidence. Also, because Camarena did not testify at this trial, Respondent's attorney did not have opportunity to cross-examine Camarena regarding any bias she might have against Respondent as a result of Respondent's complaint to IAB in September, 2007, that Camarena had given him an improper and unlawful order.

Based on the above, I find that the Advocate insufficiently proved the specific allegation in this charge that Respondent "failed and neglected to process an arrest in a timely fashion as instructed by Sergeant Yvette Camarena" in that "having affected an arrest... at approximately 2239 hours on May 24, 2008" he did not process this arrest until "approximately 0445 hours on May 25, 2008."

Therefore, Respondent is found not guilty of Specification No. 2.

Specification Nos. 3 and 4

Respondent is charged with having been discourteous and disrespectful to Camarena, in that he repeatedly mimicked Camarena while he was receiving instructions from her on processing an arrest, and with having failed to comply with an order issued by Camarena to charge the arrestee with Criminal Possession of a Hypodermic Instrument and to sign the criminal court affidavit.

I find Respondent guilty because Camarena's statement to Cortright that while she was instructing Respondent to sign a new affidavit, containing the added charge of Criminal Possession of a Hypodermic Instrument, Respondent had "mimicked" her, was corroborated by Molinari who credibly testified that on May 25, 2008 he heard a "heated debate" between Respondent and Camarena at the desk regarding signing an affidavit, that Respondent was discourteous to Camarena in that he spoke to her in a "very argumentative tone, [that] he was demeaning her," and that "he was almost mimicking" her by "repeating her words back to her but in a voice not his own almost like impersonating a different voice or impersonating her voice."

Molinari further testified that he heard Camarena and Respondent go back and forth "three or four times." Molinari testified that Respondent did not sign the affidavit until he personally directed Respondent to do so.

Although Respondent denied that he had had "mimicked" Camarena's voice, he confirmed that he had initially failed to sign the new affidavit containing the added charge of Criminal Possession of a Hypodermic Instrument because he believed that by doing so he would be perjuring himself since the owner of the car in which he had found the unused hypodermic instruments had told him that they belonged to her uncle who used them for personal medical purposes since he suffered from diabetes.

Police officers are required to immediately comply with orders issued by supervisors unless an order is clearly improper or illegal. Respondent claimed that he balked at complying with Camarena's order because he credited the owner of the car (who was a passenger of the arrestee) when she told him that the hypodermic instruments belonged to her diabetic uncle. Respondent's belief that the owner was telling the truth is

insufficient justification for failing to comply with Camarena's order to sign the affidavit containing the added charge of Criminal Possession of a Hypodermic Instrument.

Respondent is found guilty of Specification Nos. 3 and 4.

Specification No. 5

Respondent is charged with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department on September 20, 2008, by taking a leave of absence for approximately three hours and five minutes without having the accrueable time. Although a member should know whether he has sufficient accrued time prior to requesting leave, Cortright confirmed that in 2008 the only way Respondent could have ascertained his vacation leave balance from home would have been to check his most recent paystub and Cortright agreed that the supervisor who prepared and approved Respondent's UF 28 was supposed to have ascertained whether Respondent was entitled to the time he was requesting. Respondent's claim that he had good reason to believe he had at least eight hours of accrued time as of September 20, 2008 is supported by his paystub (RX B) dated September 19, 2008 which shows that as of September 6, 2008 he had ten hours and 50 minutes of available vacation leave. Therefore, it is recommended that Specification No. 5 be dismissed.

Specification Nos. 7 and 8

It is charged that on January 25, 2009, Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he reviewed a Complaint Report for aggravated harassment that he had not been assigned and reached

out to the accused whose name was listed on the Complaint Report without authorization, and that by doing so he failed to comply with an order issued by Schwing that he perform administrative duties upon the completion of his meal.

Respondent corroborated Schwing's testimony that he was directed to perform administrative duties upon the completion of his meal. Respondent also confirmed that he reviewed a Complaint Report for aggravated harassment that he had not been assigned to handle and that he reached out to the accused whose name was listed on the Complaint Report without seeking permission to do so.

Although Respondent's witness Lopez confirmed that the desk officer verified the arrest that Respondent made, the issue presented here is not whether Respondent followed proper procedure in processing the arrest. Rather, the issue is whether Respondent was authorized to reach out to the accused and to make and process the arrest. Although Respondent asserted that his actions of reviewing a Complaint Report and reaching out to the accused whose name was listed on the Complaint Report fell within a broad definition of performing administrative duties, I find that Respondent's assertion that he truly believed he was complying with Schwing's direction that he perform administrative duties upon the completion of his meal is belied by his admission that he needed "activity."

Because Respondent knew that he was not supposed to engage in any enforcement actions after he took his meal and did so anyway, Respondent is found guilty.

Specification No. 10

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that even though he had received a notification to appear at MTVB on February 4, 2009, he failed to appear at MTVB which resulted in the dismissal of a traffic summons he had issued.

It was Respondent's responsibility to either comply with the notification to appear at MTVB he had received or to request that the appearance date be changed. The fact that the UF-28 Respondent submitted (RX D) requesting leave from 1500 hours on February 4, 2009 to February 8, 2009, was approved does not excuse or justify Respondent's failure to appear at MTVB.

Therefore, Respondent is found guilty.

Specification No. 11

It is charged that Respondent "on or about February 6, 2009, while on duty" engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he failed to supply the Department timekeeper with his military drill schedule.

Since a Department record (DX 4) shows that Respondent was not on duty on February 6, 2009 but was already on military leave, and since the Advocate offered no testimony or other evidence to refute Respondent's claim that he had not yet received his military drill schedule on or about February 6, 2009 and, thus, was unable to supply the timekeeper with a schedule he had not yet received, Specification No. 11 is dismissed.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Regarding the two Specifications Respondent pleaded Guilty to, the testimony Respondent offered does not serve to mitigate his misconduct. With regard to Specification No. 6, he admitted that although the roll call for October 14, 2008 indicated that he was scheduled to appear at the offices of CCRB at 0830 hours, he did not appear there until 0900 hours because 0900 hours had been the start time for all of his court appearances and he was under the impression that he did not have to appear at CCRB until 0900 hours. With regard to Specification No. 9, he admitted that he was one hour late in appearing at MTVB on March 20, 2009, in that he was notified to appear at 2:30 p.m. but he did not appear until 3:30 p.m. which resulted in a summons he had issued being dismissed. Respondent explained that he was late because he had to stop at the stationhouse to pick up his Activity Log and the summons and because he became "stuck in traffic" while driving from the stationhouse to MTVB.

As with Specification Nos. 6 and 9, Respondent's misconduct under Specification No. 10 of failing to appear at MTVB constitutes relatively minor misconduct that would normally have been dealt with at the command level. However, Respondent's misconduct under Specification Nos. 1, 3, 4, 7 and 8, constitutes more serious misconduct.

Respondent's misconduct under Specification No. 1 of taking \$3,000 in cash found on a person who was taken into police custody, placing the cash into his own pocket and retaining personal possession of this cash when he went end of tour and while he was off-duty, constituted not only a violation of proper vouchering procedures, it also created the appearance of impropriety. Respondent's assertion that he only retained possession of the cash while off-duty because Camerena ordered him to go end of tour before he had a chance to voucher the cash does not serve to mitigate his misconduct because he had ample time to voucher the money with the desk officer who had already made an entry in the command log about the cash.

Respondent's misconduct, under Specification No. 3, of being discourteous to a sergeant, within earshot of a lieutenant, by addressing the sergeant in a falsetto-type voice, that sounded to the lieutenant as if Respondent was "almost mimicking" the sergeant's words and voice, constitutes insubordination. Respondent's testimony that on a previous occasion Camerena had treated him in a demeaning manner does not justify or excuse his action of being discourteous to a superior officer. Similarly, Respondent's misconduct under Specification No. 4 of failing to immediately comply with a sergeant's order that he add a charge of Criminal Possession of a Hypodermic Instrument to a Criminal Court Complaint is not justified or excused by his testimony that he accepted the arrestee's claim that the hypodermic instrument belonged to his uncle who used the instrument for medical injections.

Finally, Respondent's misconduct, under Specification Nos. 7 and 8, of ignoring a sergeant's order that he perform only administrative duties until the end of his tour and

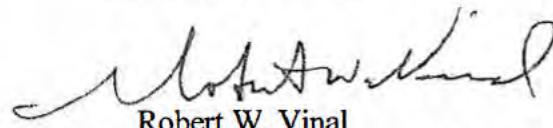
that he not engage in any enforcement activities is not mitigated by Respondent's claim that he needed enforcement "activity."

In *Case No. 2011-5794* (May 23, 2014), a nine-year police officer who had a prior disciplinary adjudication forfeited 15 vacation days after a mitigation hearing for engaging in misconduct on two occasions. On the first occasion, the officer ignored a sergeant's instruction to amend a report. On the second occasion, the officer was discourteous in that she yelled at the sergeant after the sergeant questioned her about property value.

The Advocate recommended that Respondent's penalty consist of the forfeiture of 30 vacation days and serving one year on dismissal probation. All of the misconduct that Respondent has been found guilty of committing under this disciplinary case took place prior to April, 2009, and Respondent's Department record shows that he has not been the subject of any subsequent disciplinary action. Since Respondent has not engaged in any misconduct for nearly six years, it would appear that serving a one year period on dismissal probation is unnecessary.

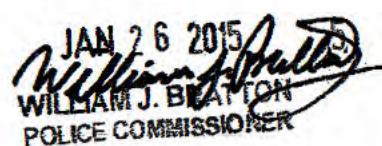
Therefore, it is recommended that Respondent's penalty consist of forfeiting 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

JAN 26 2015

WILLIAM J. BRANTON
POLICE COMMISSIONER

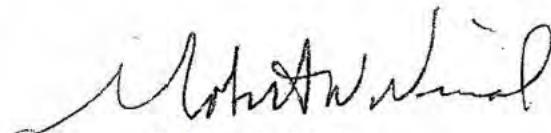
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MOHAMMAD QAZI
TAX REGISTRY NO. 928995
DISCIPLINARY CASE NO. 2009-853

Respondent received an overall rating of 3.5 on his 2013 annual performance evaluation, 3.5 on his 2012 evaluation, and 3.0 on his 2011 evaluation. He has been awarded one Meritorious Police Duty medal and six Excellent Police Duty medals. [REDACTED]

He has one prior formal disciplinary adjudication. In 2005, he forfeited 20 vacation days after he was found guilty of failing to remain alert while on duty on one occasion during 2002, and being absent from his post for one half hour without permission on another occasion during 2002. He also has monitoring records.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials